

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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NEW YORK STATE RESTAURANT  
ASSOCIATION,

No. 07 Civ. (RJH)

Plaintiff,

-against-

NEW YORK CITY BOARD OF HEALTH,  
NEW YORK CITY DEPARTMENT OF HEALTH  
AND MENTAL HYGIENE, and Thomas R. Frieden,  
In His Official Capacity as Commissioner  
Of the New York City Department of Health  
And Mental Hygiene,

DECLARATION OF  
BRUCE F. KRUEGER

Defendants.  
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BRUCE F. KRUEGER, hereby declares under penalty of perjury:

1. I am the Director of Graphics in the Bureau of Operations of the New York City Department of Health and Mental Hygiene (the "Department"). As part of my duties, I am required to create graphic materials, including, but not limited to, brochures, flyers, forms, posters, and review the work of other artists within and outside the Department, that are used in production of health education materials in the Department's Print Shop.

2. At the request of Mary T. Bassett, the Department's Deputy Commissioner for Health Promotion and Disease Prevention, in mid-March, 2007, I reviewed the proposal for calorie display submitted by Dunkin' Donuts.

3. Dunkin' Donuts had submitted a sample menu board in an attempt to demonstrate that calorie information would not fit along with price information unless the type size for both calories and prices would be so small as to be unreadable.

4. From that sample, I produced a replica of the menu board with comparable fonts and layout to demonstrate that calories could be listed easily and visibly (See Figure 1). I shortened the term "Calories," which headed the columns on the Dunkin' Donuts submission (Figure 1, left), to the term "Cal" on the modified board (right). This minimal modification left room for displaying price and calorie information in their respective columns in larger, easily readable type. This illustration shows that the calorie listings required by the regulations are feasible to implement with basic graphic design techniques.

| COFFEE & ESPRESSO                   |          |      |          |              |          |                |          |      |
|-------------------------------------|----------|------|----------|--------------|----------|----------------|----------|------|
|                                     | Calories | Sm   | Calories | Med          | Calories | Lg             | Calories | X-Lg |
| COFFEE                              | 14       | 1.29 | 20       | 1.59         | 28       | 1.89           | 34       | 21.9 |
| ICED                                | 15       | 1.29 | 22       | 1.59         | 30       | 1.89           |          |      |
| Original • Decaf • Flavored         |          |      |          |              |          |                |          |      |
| TURBO HOT                           | 14       | 2.19 | 20       | 2.59         | 28       | 2.69           | 34       | 21.9 |
| ICED                                | 15       | 1.29 | 22       | 1.59         | 30       | 1.89           |          |      |
| Coffee with a shot of Espresso      |          |      |          |              |          |                |          |      |
| LATTE                               | 116      | 2.19 | 186      | 2.59         | 232      | 2.69           |          |      |
| ICED                                | 124      | 1.29 | 199      | 1.59         | 259      | 1.89           |          |      |
| Espresso & Milk                     |          |      |          |              |          |                |          |      |
| Available in Caramel or Mocha Swirl |          |      |          |              |          |                |          |      |
| LATTE LITE                          | 14       | 2.19 | 20       | 2.59         | 28       | 2.69           |          |      |
| ICED                                | 15       | 1.29 | 22       | 1.59         | 30       | 1.89           |          |      |
| ESPRESSO                            | 4        |      |          | one shot .99 |          | extra shot .99 |          |      |
| CAPPUCINO                           | 85       | 2.19 | 136      | 2.59         | 170      | 2.69           |          |      |
| BOX O' JOE                          |          |      |          |              |          |                | 140      | 9.99 |
| COFFEE BY THE POUND                 |          |      |          |              |          |                |          | 6.99 |

  

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| Original • Decaf • Flavored         |     |      |     |              |     |                |     |      |
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Figure 1. Menu board sample supplied by Dunkin' Donuts (left) vs. DOHMH adaptation of Dunkin' Donuts sample menu board (right).

I declare under penalty of perjury pursuant to 28 U.S.C. §1746 that the foregoing is true and correct.

Executed on July 3<sup>rd</sup> 2007.

  
BRUCE F. KRUEGER